LEASES — COVENANTS OF PERPETUAL RENEWAL.

THE earliest case, and perhaps the most famous one, in which the question of the true construction of the covenant for renewal was distinctly presented for decision was Bridges *v.* Hitchcock,[1] decided in 1715. This case has been cited in most of the subsequent cases, and in some of them exhaustively examined.[2]

In Bridges *v.* Hitchcock the words of the covenant of renewal were: —

"If the lessee, his executors, etc., should at any time thereafter before the expiration of the term demised be minded to renew and take a farther lease of the demised premises, then, upon application made at any time before the last six months of said term, the lessor, his heirs or assigns, should grant such farther lease as should by the lessee, his executors, etc., be desired, without any fine to be demanded therefor, and under the same rent and covenants only as in this lease."

This was held to be a covenant for perpetual renewal; but the case is clearly not an authority for the proposition, as it seems to have been erroneously supposed to be, that a bare covenant to renew under the same rent and covenants includes a right to have a covenant of renewal inserted in the renewed lease, because "it appears most manifestly that there was MUCH MORE in the case than a *mere covenant to renew under the same rent and covenants;* namely, besides the circumstance of an expenditure by the lessee to the extent of £1800, under a covenant for repairing, there was an *express* engagement in favor of the lessee not for a farther term of the same duration as the original lease, but for SUCH FARTHER LEASE *as the lessee should* REQUIRE, that is, for any lease *renewable* or *irrenewable* for *any term he should think fit to insist upon.*"[3] We shall have occasion to refer to this case again in considering some of the later cases.

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[1] 5 Bro. P. C. 6.

[2] Argument for Appellant in Earl of Inchiquin *v.* Burnell (1795); 1 Hargrave's Jur. Arg. 421, where the case is very carefully stated; Tritton *v.* Foote (1789), by Lord Chancellor Thurlow, 2 Cox, 174; Iggulden *v.* May (1806), by Lord Ellenborough, C. J. 7 East, 237.

[3] Argument for the Earl of Inchiquin on his appeal to the Irish House of Lords. 1 Har. Jur. Arg 423.

The next case in order of time was Hyde *v.* Skinner.[1] This was an express decision by Lord Chancellor Macclesfield, that a covenant to renew a lease at the same rent and on the same covenants does not import a perpetual renewal.

Lord Macclesfield said on this point: "And though the lease is to be made on the same covenants, yet that shall not take in a covenant for the renewing this new lease, forasmuch as then the lease would never be at an end."

This case is reported also in 3 Ridgeway P. C. 393, from the notes of Mr. Melmoth (co-editor with Mr. Peere Williams of Vernon's Reports, and an eminent practising barrister in equity), with a variation in the terms of the covenant to renew which makes a decided difference, and apparently brings the decision of Lord Macclesfield into conflict with the earlier decisions of the Court of Exchequer and of the House of Lords in Bridges *v.* Hitchcock. For Mr. Melmoth's report of Hyde *v.* Skinner introduces into the lease a clause not contained in the report in Peere Williams, namely, that the lessor should, if thereto required, execute to the said William Hyde a further lease of the premises under the like covenants, and at the same rents as were therein contained *for such further term as the said William Hyde should then desire.*

The third case was Davis *v.* Taylor's Company,[2] which was tried at the Rolls in England before Sir Joseph Jekyll. The report is as follows: —

"A lease was made by the defendant to the plaintiff's testator, of a house for twenty-one years; there was a covenant that the defendant should at the end of the first seven years, upon the surrender of that lease, make a new lease for the term of twenty-one years, at the same rent and with the same covenants as were reserved and covenanted in the old lease; the bill was for a specific performance of the covenant, and the question was if the covenant of renewal should be inserted in the new lease? The Master of the Rolls was of opinion it should not, there being no words to show that it was the intention of the parties that the lease should be renewed *toties quoties*, for that in effect would be to give the plaintiff a fee, and therefore decreed the defendant to make a new lease, but without the covenant for renewal."

It will be observed that this case supports in a more unequivocal manner than does Hyde *v.* Skinner the proposition that the covenant to renew is not to be inserted in the renewal lease.

The fourth case was Furnival *v.* Crew,[3] before Lord Chancellor

[1] 2 Peere Williams, 196 (1723).
[2] 3 Ridgeway P. C. 395 (1736).
[3] 3 Atk. 83 (1744).

Hardwicke. It was a lease for lives, and the renewal covenant was: "and the said John Crew for the consideration of the said sum of 68 pounds, etc., shall and will execute one or more lease or leases, under the same rent and covenants as are expressed in these presents, and so to continue the renewing of such lease or leases to Thomas Moore or his assigns," etc.

The words "so to continue the renewing" were considered by Lord Hardwicke very significant and decisive of the case in favor of the lessee, but he also adverted to the circumstance of the stipulation "that the 68 pounds is be paid at Crewhall or at the place where the said hall now stands" as at least hinting an intention to make the lease perpetually renewable, and quoted with approval Lord Hale's remark in King *v.* Melling, 1 Vent. 232, that the "meaning is to be spelled out by little hints."

Of this case Sir Richard Pepper Arden, M. R., in Baynham *v.* Guy's Hospital,[1] said: "Furnival *v.* Crew,[2] which is relied on in Cooke *v.* Booth, had clear words for a perpetual renewal; which made it impossible to construe it otherwise."

The next case was Russell *v.* Darwin,[3] before Lord Chancellor Camden in 1767.

Here the lease was for the term of ninety-nine years if three persons named should so long live, rendering rent, with covenants, in the events of the death of any one or two of the appointees, to add one or two new lives as the case might be, on payment of certain stipulated fines. Then followed the clause which governed the event which actually happened, "or upon the death of all of them (by name) would, upon payment of 1150*l.*, make a new lease or grant for any three new lives, to be nominated and appointed by the said Richard Russell, his executors, etc., for the like term as was thereby demised, at and under the like rents, covenants, and agreements therein contained."

The plaintiff having applied to the defendants for a renewal and having tendered the engrossment of a lease to them for ninety-nine years, renewable upon the dropping of three new lives, at the old rent, with a covenant for renewal of that lease, in the same words or to the same effect, as had been contained in the original lease of 1705, tendering at the same time the fine of 1150*l.*, and the defendants having declined executing any such lease with any such covenant.

His lordship was of opinion that the defendants were not under

[1] 3 Ves. Jr. 295 (1796). [2] 3 Atk. 83. [3] 2 Bro. C. C. 638, note.

any obligation to grant any further lease than for three new lives only, and that the plaintiff was not entitled to have any covenant inserted for any further renewal, the words of the old covenant not obliging the lessors to grant a new lease, but upon the death of some one of the three persons named in that lease; and they being all dead, the plaintiff could claim no further renewal; and therefore his lordship decreed the defendants, upon payment to them of the fine of 1150*l.*, to grant to the plaintiff a new lease for ninety-nine years, renewable on the deaths of three persons named in the lease, but without any covenant for any further renewal.

The next case was the celebrated one of Cooke *v.* Booth, which came before the Court of King's Bench in 1778.[1]

"This was a case out of Chancery for the opinion of this court, stating, in substance, that Robert Booth by indenture demised certain premises to Otho Cooke for three lives with covenants for renewal 'under the before mentioned annual rent and the same covenants therein contained.'

"This lease bore date the 22d of December, 1749, and there had been successive renewals containing the same clause of renewal, from the time of a former lease, granted by the ancestor of the said Robert Booth, bearing date the 3d of August, 1688, down to the date of the lease in question."

Lord Mansfield, Ch. J., and Ashhurst, J., relied upon the argument that the lessor by making four successive renewals had put his own construction on the covenant and was bound by it. Judges Buller and Willes relied on the authority of Bridges *v.* Hitchcock.

It will be perceived that in so far as this decision is placed on the authority of Bridges *v.* Hitchcock it can hardly be supported in view of the facts of that case; for there was much more in the case than a mere covenant to renew under the same rent and covenants."[2]

The rule of construction adopted by Lord Mansfield and Ashhurst, J., from the acts of the parties, was strenuously opposed by Sir Richard Pepper Arden, M. R., in Baynham *v.* Guy's Hospital,[3] and disapproved of by Lord Eldon in Iggulden *v.* May,[4] by Sir William Grant, M. R., in Moore *v.* Foley,[5] and by Lord Ellenborough in Iggulden *v.* May,[6] and it is said in a note to section 293 of Greenleaf on Evidence, "Cooke *v.* Booth[7] has been repeatedly disapproved of, and may be considered as overruled; not,

[1] Cowper, 819. [2] Earl of Inchiquin *v.* Burnell, 1 Har. Jur. Arg. 423.
[3] 3 Ves. Jr. 295 (1796). [4] 9 Ves. Jr. 335. [5] 6 Ves. 258.
[6] 7 East, 237. [7] Cowp. 819.

however, in the principle it asserts, but in the application of the principle to that case." Evidence of the practical interpretation by the acts of the parties seems to be more appropriately applied to remove a doubt raised by ambiguous language in the description of land conveyed by deed, than in the construction of the covenants thereof.[1]

In the same year, 1778, the case of Reece *v.* Lord Dacre came before Lord Thurlow. This was perhaps the case of Lord Thurlow's which Lord Brougham remembered as preceding Tritton *v.* Foote, but the report of which he could not find, when writing his opinion in Brown *v.* Tighe.[2] Reece *v.* Lord Dacre is reported in 1 Harg. Jur. Arg. 438.

The lessor covenanted to grant a new lease for ninety-nine years "if the two new lives and the old life should so long continue, at the said yearly rent of £20 and hens and salmon on the same days and in the same manner as by the said old lease;" such new lease "to have and contain the same covenants, reservations, provisos, conditions, and agreements."

Upon this lease with this covenant of renewal, the question was, whether in a new lease there should be a covenant of renewal; and the bill was brought to require the insertion of such a renewal covenant.

At first his lordship was for dismissing the bill. But at last he ordered that the cause should stand over to the next Michaelmas term and that the plaintiff should be at liberty to bring an action on the covenant in the then term, and should proceed to try the cause in the next term. But no action was brought, the plaintiff's counsel having advised him to take a lease without a covenant for perpetual renewal, which, indeed, the language of the renewal covenant clearly did not call for.

This case is also stated in substantially the same way in a note of Sir Samuel Romilly, cited in his argument as counsel in Iggulden *v.* May before Lord Eldon in 1804.[3]

He says: "Lord Thurlow seemed strongly inclined that a court of equity ought not to enforce a covenant, such as this, under all the circumstances, appeared to be," etc.

Eleven years later the case of Tritton *v.* Foote[4] came before Lord Thurlow. The lease was for twenty-one years with a cove-

[1] Stone *v.* Clark, 1 Metcalf, 378; Greenleaf, Evidence, § 293; Cambridge *v.* Lexington, 17 Pick. 222.

[2] 8 Bligh (N. S.), 272 (1834).

[3] 9 Ves. Jr. 332.

[4] 2 Bro. C. C. 638 (1789), and 2 Cox, 174.

nant to renew for seven years under the same covenants. The bill was for specific performance of the covenant to renew.

Lord Thurlow declared the complainant entitled to a lease for seven years only, and said he had not an idea that the intention of the lessor was to renew the covenant of renewal, or that it could be so construed in a court of equity. Referring to Cooke *v.* Booth, he said: "That case was decided on the acts of the parties themselves, as giving a construction to the clause, and leaves every other case to be determined upon the apparent intention of the parties. . . . Even if the lessor had been entrapped into a covenant which at law must be construed to amount to a covenant for a perpetual renewal at the request of the lessee, I should most certainly have left the lessee to his remedy for damages, being most perfectly convinced that a covenant for a perpetual renewal was the farthest thing from the intention of the parties. It is out of all sight, therefore, to give a party any assistance in this court who comes to ask for a thing of this nature."

In thus holding that the intention of the parties is to govern the question, Lord Thurlow in this case is thought by Lord Brougham[1] to have receded from the high ground upon which he had stood in the former case, because his position in that former case (Reece *v.* Lord Dacre [?]) is supposed to have been that a court of chancery would not decree a specific performance of such a covenant merely because it was a covenant of perpetual renewal.

The next case in order of time was Earl of Inchiquin *v.* Burnell (1794), in the House of Lords of Ireland.[2]

This case seems chiefly remarkable for an ingenious attempt on the part of the counsel for the lessee to impute to the lessor an intention of covenanting for a perpetual renewal of the lease, from the use of the word "reservations" as applied to the fine which the lessee covenanted to pay upon renewal. The attempt failed, the judges holding that the covenant to pay a fine was not a reservation.

In other respects the case seems to have been a clear one in favor of the lessor, as there are no words in the lease pointing to a perpetual renewal, and, on the contrary, there were expressions which indicated that one renewal only was in the contemplation of the parties.

The case is, however, a valuable contribution to the literature of the subject by reason of the thoroughness of the preparation of

[1] Brown *v.* Tighe, 8 Bligh (N. S.), 272 (1834). [2] 3 Ridgeway, 376.

counsel, some precedents being here collected which are not to be found elsewhere, and which might not otherwise have been preserved, and all the cases up to that date being very elaborately and exhaustively commented upon.[1]

The next case in order of time was Baynham *v.* Guy's Hospital.[2] The decision was given by the Master of the Rolls, Sir Richard Pepper Arden.

After commenting at length on some of the earlier cases, and especially on Cooke *v.* Booth, he said: "I collect, therefore, from these cases, this: that the courts in England, at least, lean against construing a covenant to be for a perpetual renewal, unless it is perfectly clear that the covenant does mean it." A note to the report of this case expresses the rule thus: "A covenant for renewal of such a nature as would virtually lead to a grant in perpetuity will never be enforced in equity where no sufficient consideration for such a grant appears, and where the parties have not expressed themselves in language devoid of all ambiguity."

In Moore *v.* Foley,[3] Sir William Grant, Master of the Rolls, quoted with approval the above language of his predecessor in Baynham *v.* Guy's Hospital, and added: "There being no clear words in this case, nor any words relative to perpetual renewal, but the parties themselves having limited it, the question is, whether the proviso that the renewal shall be under the same rents, covenants, and conditions as the first lease shall, in the absence of more positive stipulation, amount to a perpetual renewal. Upon Tritton *v.* Foote and Russell *v.* Darwin, I am bound to hold that a covenant for renewal under the same covenants does not include the covenant to renew, but that it means only a second lease, not a perpetuity of leases."

The fullest and clearest explanation of the reasons for the rule, amounting to a demonstration of its soundness, is by Lord Ellenborough, C. J., in Iggulden *v.* May.[4]

The opinion is too long to be quoted from at much length here, but perhaps the gist of the matter may be given in a short quotation. He said: —

"The case necessarily resolves itself into this question, namely, whether a covenant to grant a new lease with *all covenants* can be satisfied by a lease with *all covenants except the covenant for renewal.* The argument, that a covenant for a lease with *all* the covenants cannot be

[1] See the report in 3 Ridgeway, 376, and especially, The Argument for the Earl of Inchiquin on Appeal, etc., 1 Har. Jur. Arg. 423.

[2] 3 Ves. Jr. 295 (1796). [3] 6 Ves. Jr. 232 (1801). [4] 7 East, 237 (1806).

satisfied by a lease with *all but one* will have no weight if, according to the fair construction of the lease, that one covenant should be found to have nothing to do with the subject-matter to be granted. The covenant is, 'at the end of 18 years of the term of 21 years' granted by the lease, to grant 'A new lease for the time and term of one-and-twenty years with All covenants, grants and articles, *as in that indenture contained.* The subject-matter therefore is *one* lease, not many; for *a* new lease is the same as *one* new lease; and if the parties intended to contract for one lease, there can be no doubt that the covenants to be introduced must be commensurate with the duration of such lease, and suited to the subject-matter of the grant. . . . The case on the part of the plaintiff supposes that it was the intention of the parties to express what, if they had so intended, might have been expressed, without difficulty or ambiguity, by words which would have obviously occurred to the most inexperienced draftsman. Had the words 'and so from time to time' been added after 'at the end of eighteen years of the said term of twenty-one years or before,' this design of the parties would have been easily and unequivocally pointed out."

The next important case came before Lord Chancellor Eldon in 1807. It was City of London *v.* Mitford.[1] The circumstances of this case were complicated, and there is in it no clear discussion of the subject under consideration here, but the rule above stated is reaffirmed in the note, which is as follows: "Covenants for perpetual renewal, if fairly entered into and distinctly expressed, are, no doubt, valid; but if the language of such covenants be not perfectly unambiguous, a court of equity will never adopt a construction which would lead to a perpetuity of the leasehold interests."

In 1823 the case of The Copper Mining Company *v.* Beach[2] came before Sir J. Leach, V.-C.

The covenant for renewal was in these terms: —

"That he, the said Thomas M. Talbot, his heirs and assigns, in consideration of the sum of £400 paid by the said Governor and Company would . . . always at any time, when and as often as the said Governor and Company, their successors, etc., should and would request the same, by indenture under his or their hands and seal, lease, . . . let, etc., all and singular the premises, etc., for the further term of thirty-one years; in which said new lease or leases were to be contained and inserted the same rents, payments, reservations, covenants, articles, clauses, provisos, and agreements as were thereinbefore mentioned and contained."

The Vice-Chancellor held that the plaintiffs were entitled to a perpetual renewal of the lease.

[1] 14 Ves. 41. [2] 13 Beav. 478.

In Browne *v.* Tighe, in the House of Lords,[1] Lord Brougham states the general rule under consideration as follows: —

"That a covenant, to receive the construction of perpetual renewal, must be plain and distinct, and such as to bear no other construction without force and violence done to the words and the context, is a proposition of law which is both borne out by principle and is sustained by the decided cases."

In Hare *v.* Burgess,[2] in a covenant to renew, under certain contingencies, the words were, "at the same rent and with and subject to the same covenants, provisos, and agreements, including this present covenant, as are contained in the original lease."

The Vice-Chancellor, Sir W. Page Wood, said: "The court is not at liberty to do violence to the words of an instrument in order to carry into effect what is merely a presumption. So in a case like the present, giving full weight to the argument that there is a presumption against construing a covenant so as to amount to a covenant for perpetual renewal, — that *prima facie* a lessor shall not be taken to have intended to enter into such a covenant; still there may be in the instrument expressions indicative of such an intention; and if there be, the court will not force the construction, but will give effect to what appears to have been the lessor's intention."

The covenant was held to be one for perpetual renewal.

The latest English case to which I will refer is Swinburne *v.* Milburn et als.[3] The head-note is as follows: —

"In construing a covenant in a lease, for the purpose of ascertaining whether it is a covenant for perpetual renewal or not, the same rule of construction applies as in construing any other contract, and the rule is that the intention of the parties to the contract is to be ascertained from the language used. When the language used is obscure, the presumption is against a covenant for perpetual renewal; but when the language is clear, this presumption has no application."

Brett, M. R., and Bowen, L. J., delivered opinions which fully justify the reporter's note, and it will be noted that this modern English rule is more liberal in favor of the covenant than that formulated by Lord Brougham. See also Ex parte Clarke,[4] and article in the Irish Law Times, vol. xviii. 235, "Covenants for Perpetual Renewal of Leases."

The earlier English rule, however, appears to have been followed in the United States.

[1] 8 Bligh (N. S.), 272 (1834).
[2] 4 Kay & J. 45 (1857).
[3] 50 L. T. (N. S.) 311 (1884).
[4] 6 Irish Reps. Eq. 51.

Muhlenbrinck *v.* Pooler[1] contains an interesting review of some of the early English cases. The lease in that case stipulated for a renewal, and continued: "The new lease shall contain covenants, conditions, and agreements the same as those herein contained." It was held that the covenant for renewal was not to be inserted in the new lease.

The case contains an instructive commentary on the English cases. Referring to the above quoted clause, Judge Daniels says: —

"It is upon this stipulation that the tenant predicated his right to a new lease, identical with the first, for a second leasehold term of the property. And authorities have been relied on, which, if they could at the present time be followed, would sustain this claim.[2]

"Bridges *v.* Hitchcock was afterwards followed in Furnival *v.* Crew (3 Atkyns, 83), and in Clark *v.* Booth (2 Cowper, 819). The point was also considered in Iggulden *v.* May, 9 Ves. 324, but it was left undecided by the Chancellor, who suspended the action until a new trial could be had, and a construction given to the lease in an action at law. The trial afterwards took place, and the court held that the tenant was not entitled to an indefinite renewal of the term, but that he was limited to one additional term of twenty-one years, notwithstanding the fact that the lease provided that the succeeding lease should contain 'all covenants, grants, and articles as in said indenture or lease were contained, and particularly such covenant for renewal as is contained therein.'"[3]

This is an extreme decision, marking a wide departure from the principle upon which the case of Bridges *v.* Hitchcock was decided, both in the Court of Chancery and the House of Lords, and it was characterized by a disposition to restrict the right of the tenant to put one additional term, even when the language of the lease, if full effect had been given to it, would have entitled him to other succeeding like terms in the property.

In the case of Willan *v.* Willan,[4] the lease covenanted for renewal for a further term, and so on forever, or so long as the testator or his assigns, etc., should hold the property, and this was considered by the Chancellor, Lord Eldon, as it certainly was, to be sufficient to require repeated renewals. But there the language of the lease was such as plainly to express that obligation, while in this case it failed to declare the intention of the parties in the same or any other equivalent manner.

"The rule of construction became settled at an early date that a covenant for renewal, or for an additional term, should not be held to create

[1] 40 Hun, 526 (1886).
[2] Citing Bridges *v.* Hitchcock, 5 Bro. P. C. 6.
[3] Iggulden *v.* May, 7 East, 237.
[4] 16 Ves. 72 (1809).

a right to repeated grants in perpetuity unles some sufficient consideration for such grant was made to appear, and the parties had expressed themselves upon this subject in language devoid of all ambiguity."

See also, as to the rule of construction which obtains in the United States, Banks *v.* Haskie,[1] where Miller, J., gives the history of Irish tenures under leases for lives.[2]

Some authorities assert that the covenant for perpetual renewal contravenes the "Rule against Perpetuities."[3]

It is true that the courts lean against such a construction of covenants for renewal in leases as would make them covenants for perpetual renewal; but I submit that the cause of this attitude of the courts is not the influence of the Rule against Perpetuities, or of any analogous principle, but simply a consensus of opinion that the rule of construction adopted in these cases is in accordance with equity, and that its application aids the courts in ascertaining the intention of the parties from the written language they have used; the intention of the contracting parties, when ascertained, governing in the construction of leases as of all other contracts.

I understand that the reason for the existence of the Rule against Perpetuities is the idea, at first vague, but long since fixed as a principle of political economy, statecraft, and jurisprudence, that it is contrary to public policy to allow any unreasonable restraint on the free alienation of land. Now it seems to me that this reason cannot be used in support of the objection to the perpetuity of leasehold interests in land.

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[1] 45 Md. 207 (1876).

[2] Blackmore *v.* Boardman, 28 Mo. 420 (1859); Cunningham *v.* Pattee, 99 Mass. 248 (1868); Brush *v.* Beecher, 110 Mich. 597 (1896); Kellock *v.* Kaiser, Wisconsin S. C. (1897), 73 N. W. Rep. 776.

[3] See Syms *v.* Mayor of New York, 50 N. Y. Superior Court Reps. 289 (1884); Blackmore *v.* Boardman, 28 Mo. 420 (1859); Morrison *v.* Resignol, 5 Cal. 64 (1855); Diffenderfer *v.* Board of Public Schools, 120 Mo. 447 (1894).

This view is ably supported by Mr. G. H. Weld in an article in the Central Law Journal, vol. vi. 203, entitled "Lease for Years Renewable Forever," who advances the opinion that this covenant can be sustained (paradoxical as it seems) only on the ground that it creates an estate which is held for many purposes to be a fee.

In Ohio, permanent leaseholds are, by statute, made real estate for purposes of descent and distribution, of sales on execution, and judgment liens. Bates' Annotated Ohio Statutes, §§ 4181, 5374.

See, contra, Gray on the Rule against Perpetuities, § 320; 1 Washburn on Real Property, § 439; Gomez *v.* Gomez, 88 N. Y. Supreme Court Reps. 566 (1894).

Recent very careful studies of the rule against perpetuities have been made by T. Cyprian Williams, Esq., and by Charles Sweet, Esq., in the Law Quarterly Review, vol. xiv. No. 55, July, 1898, vol. xv. N . 57, January, 1899. I do not find in either of these articles anything which gives me reason for believing that the covenant for perpetual renewal of a lease contravenes the rule.

The reversion, although perhaps of little value, is freely alienable, and the lease, subject to such restrictions as the parties themselves have imposed, is assignable.

The Rule against Perpetuities does, no doubt, forbid the postponement of the beginning of the term under such a lease beyond the period of a life or lives in being and twenty-one years.[1] But if the lease does not offend against the Rule as to its inception, its indefinite or even perpetual duration would seem innocent of offence.

In Ireland the dispute has been whether or not a tenant under a lease with the covenant of perpetual renewal, who has failed to pay the stipulated fine, is entitled to relief in equity.[2]

This case is notable as being the one wherein Lord Chief Baron Gilbert first applied his device of septennial fines, which was well suited to the unbusiness-like habits of Irish tenants, who frequently neglected to apply for renewals on the dropping of lives; and for many years, until it was superseded by the Irish Tenantry Act (19 and 20 Geo. III. c. 30), enabled the courts to do substantial justice between landlords and tenants.[3]

I. Homer Sweetser.

BOSTON, May 25, 1899.

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[1] 1 Washburn on Real Property, § 439.

[2] Anderson *v.* Sweet, 2 Bro. P. C. 256 (1722).

[3] Kane *v.* Hamilton, Ridgeway's Cases in Parliament, 180 (1784); Bateman *v.* Murray, Ibid. 187 (1785); and Boyle *v.* Lysaght, Vernon & Scriven, 135 (1787), are also important cases on this subject. Other American cases on the Covenant of Perpetual Renewal are: Abeel *v.* Radcliffe, 13 Johns. 296 (1816); Rutgers *v.* Hunter, 6 Johns. Ch. 215 (1822); Piggott *v.* Mason, 1 Paige, 412 (1829); Banker *v.* Braker, 9 Abbott N. C. 411 (1880); Worthington *v.* Lee, 61 Md. 530 (1883); Clinch *v.* Peruette, Canada S. C. Reps. vol. xxiv. 385 (1895).